

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

GEORGE E. BARTON,

Plaintiff,

v.

GARY W. SEWELL, et al.,

Defendants.

No. CV-06-109-FVS

ORDER GRANTING AND
DENYING RECONSIDERATION

THIS MATTER comes before the Court based upon the plaintiff's motion for reconsideration. He is representing himself; the defendants are represented by Steve Gustafson.

BACKGROUND

On March 28, 2008, the Court granted a motion to dismiss for lack of personal jurisdiction brought by defendants Gary Sewell and Garton & Associates, Realtors. Fed.R.Civ.P. 12(b)(2). The Court ruled that plaintiff George Barton could not establish that they are subject to either general or specific jurisdiction in the State of Washington. Mr. Barton moves the Court to reconsider.

STANDARD

The plaintiff's motion falls within the scope of Rule 59(e). In order to qualify for reconsideration, he must (1) present newly discovered evidence, (2) demonstrate that the Court's decision was

1 clearly erroneous or manifestly unjust, or (3) identify an intervening
2 change in controlling law. See *School Dist. No. 1J, Multnomah County,*
3 *Or. v. ACandS, Inc.*, 5 F.3d 1255, 1263 (9th Cir.1993).

4 **RULING**

5 A nonresident company submits itself to the jurisdiction of
6 Washington courts with respect to any cause of action that arises out
7 of business which it transacts in this state. RCW 4.28.185(1)(a).
8 The jurisdiction conferred by RCW 4.28.185(1)(a) -- *i.e.*, specific
9 jurisdiction -- extends to the limit imposed by the due process
10 clause. *Omeluk v. Langsten Slip & Batbyggeri A/S*, 52 F.3d 267, 269
11 (9th Cir.1995). Exercising specific jurisdiction over a nonresident
12 company is consistent with due process if the company directed acts at
13 this forum, the plaintiff's claims arise out of the company's forum-
14 related acts, and requiring the nonresident company to defend itself
15 in this forum would be reasonable. See *Yahoo! Inc. v. La Ligue Contre*
16 *Le Racisme et L'Antisemitisme*, 433 F.3d 1199, 1205-06 (9th Cir.2006)
17 (*en banc*). In its order of March 28th, the Court concluded that the
18 plaintiff cannot establish purposeful direction. *Cf. id.* at 1206
19 (purposeful direction requires evidence that the defendants "committed
20 an intentional act, expressly aimed at the forum state, causing harm
21 that the defendant knows is likely to be suffered in the forum
22 state"). Upon further reflection, the Court is concerned that its
23 original conclusion may be incorrect. However, even if the Court
24 erred in that regard, the Court's ultimate ruling was correct for
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1 another reason. It would be unreasonable to require the defendants to
2 defend themselves in Washington.

3 The burden is upon the defendants to make a compelling case that
4 it would be unreasonable to require them to defend themselves in this
5 forum. See *Menken v. Emm*, 503 F.3d 1050, 1061 (9th Cir.2007). The
6 Court must consider seven, non-exhaustive factors in determining
7 whether the defendants have carried their burden. *Id.* at 1060. The
8 first factor is "the extent of the defendants' purposeful interjection
9 into the forum state's affairs." *Id.* There is no evidence that the
10 defendants regularly request Washington residents to purchase real
11 estate in the State of Oregon. Assuming, for purposes of argument,
12 that the plaintiff's allegations are correct, this appears to be an
13 isolated incident. Thus, the first factor provides only limited
14 support for the exercise of jurisdiction. The second factor is "the
15 burden on the defendant of defending in the forum." *Id.* One of the
16 defendants is an individual; the other is a small company. They will
17 be burdened by having to defend themselves in this forum. Thus, the
18 second factor weighs against exercising jurisdiction. The third
19 factor is "the extent of conflict with the sovereignty of the
20 defendants' state." *Id.* The plaintiff's claim(s) arise from a real
21 estate purchase that allegedly turned sour. The defendants allege,
22 and the plaintiff does not deny, that he formed a limited liability
23 company in Oregon to serve as the purchaser and take title to the
24 property. Oregon has an interest in resolving a dispute between
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1 Oregon companies, especially since the dispute involves real property
2 that is located in Oregon. Thus, the third factor weighs against
3 exercising jurisdiction. The fourth factor is "the forum state's
4 interest in adjudicating the dispute." *Id.* Washington has an
5 interest in protecting its residents from either negligent or
6 intentional misrepresentations in business transactions. Thus, the
7 fourth factor weighs in favor of exercising jurisdiction. The fifth
8 factor is "the most efficient judicial resolution of the controversy."
9 *Id.* Evidence is located in both Washington and Oregon, although it
10 appears that more of the evidence is located in the latter than in the
11 former. Thus, the fifth factor tends to weigh against exercising
12 jurisdiction. The sixth factor is "the importance of the forum to the
13 plaintiff's interest in convenient and effective relief." *Id.* There
14 is no indication that the plaintiff would be unable to obtain adequate
15 relief in Oregon. Thus, the sixth factor weighs against exercising
16 jurisdiction. The seventh factor is "the existence of an alternative
17 forum." *Id.* There is every indication that Oregon is available as an
18 alternative forum for resolution of the parties' dispute. Thus, the
19 seventh factor weighs against exercising jurisdiction. On balance,
20 the preceding seven factors weigh heavily against exercising
21 jurisdiction. It would be unreasonable to require the defendants to
22 defend themselves in this forum. That being the case, the Court's
23 original ruling was correct, albeit for reasons other than the ones
24 given by the Court.
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ATTORNEY'S FEES

The defendants are the prevailing parties. They may be entitled to attorney's fees. RCW 4.28.185(5).

IT IS HEREBY ORDERED:

1. The plaintiff's motion for reconsideration (**Ct. Rec. 58**) is granted in part and denied in part.

2. The Court withdraws that part of its March 28th order indicating that the plaintiff cannot establish purposeful direction.

3. The Court adheres to its original ruling for the reasons set forth above.

4. The District Court Executive shall enter judgment dismissing the plaintiff's complaint for lack of personal jurisdiction.

5. The Court retains jurisdiction for the limited purpose of determining whether the defendants are entitled to costs and attorney's fees.

6. The Court will not entertain another motion for reconsideration.

IT IS SO ORDERED. The District Court Executive is hereby directed to enter this order, furnish copies to Mr. Barton and to counsel for the defendants, and enter judgment accordingly.

DATED this 11th day of July, 2008.

s/ Fred Van Sickle

Fred Van Sickle
Senior United States District Judge